

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201012028	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 08/30/2010 9:20 AM	Location of Incident: Field Place between Grand Concourse and Ryer Avenue & the 46th Precinct Stationhouse	Precinct: 46	18 Mo. SOL 2/29/2012	EO SOL 2/29/2012	
Date/Time CV Reported Wed, 09/01/2010 11:37 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/01/2010 11:37 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Harry Delacruz	20377	941272	046 PCT
2. SGT Francis Bryant	00370	927980	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Elisha Duncan	03073	926793	046 PCT
2. POM Orlando Colon	26399	940992	046 PCT
3. POM Gabriel Baaith	25605	942970	046 PCT
4. POM Edwin Jerez	09352	941258	046 PCT
5. SGT John Gabriel	04513	896383	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.SGT Francis Bryant	Force: At Field Place, between Grand Concourse and Ryer Avenue in the Bronx, Sgt. Francis Bryant pointed his gun at § 87(2)(b)	
B.SGT Francis Bryant	Abuse: At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.SGT Francis Bryant	Discourtesy: At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant spoke obscenely and/or rudely to § 87(2)(b)	
D.POM Harry Delacruz	Discourtesy: At the 46th Precinct Stationhouse in the Bronx, PO Harry Delacruz spoke obscenely and/or rudely to § 87(2)(b)	

Case Summary

On September 1, 2010, § 87(2)(b) called the CCRB and filed the following complaint (Encl. 4A-D). On August 30, 2010, § 87(2)(b) called IAB via 911 and filed a complaint regarding the same incident. The complaint was forwarded to the CCRB on June 7, 2010, via IAB log 10-43688 (Encl. 3A-B).

At approximately 9:20 a.m. on August 30, 2010, § 87(2)(b) and § 87(2)(b) were arrested at Field Place, between Ryer Avenue and Grand Concourse, in the Bronx and taken to the 46th Precinct stationhouse. At the stationhouse, § 87(2)(b) was also arrested. The following allegations resulted:

- **Allegation A – Force – At Field Place, between Grand Concourse and Ryer Avenue in the Bronx, Sgt. Francis Bryant pointed his gun at § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Abuse of Authority – At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C – Discourtesy – At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant spoke obscenely and/or rudely to § 87(2)(b)**
- **Allegation D – Discourtesy – At the 46th Precinct Stationhouse in the Bronx, PO Harry De La Cruz spoke obscenely and/or rudely to § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is § 87(2)(b)
§ 87(2)(b)

Notice of Claim

On August 31, 2010, § 87(2)(b) filed the following Notice of Claim with the Comptroller's Office (Encl. 5A-B).

§ 87(2)(b) alleged that at approximately 9:25 a.m. on August 30, 2010, he was “falsely” arrested at 2120 Ryer Avenue in the Bronx. He was handcuffed tightly and was searched after he was arrested.

CCRB Testimony

On September 21, 2010, § 87(2)(b) was interviewed at CCRB (Encl. 5C-5M). This statement was consistent with his initial CCRB complaint, made on September 1, 2010 (Encl. 4A-D). They have been combined and summarized below, with any inconsistencies noted.

At approximately 9:20 a.m. on August 30, 2010, § 87(2)(b) left his residence, at § 87(2)(b) in the Bronx, and began walking along Ryer Avenue towards the Beauty Shop he owns at § 87(2)(b). As he approached the intersection of Field Place and Ryer Avenue, § 87(2)(b) saw two officers, who were identified via the investigation as Sgt. Francis Bryant and PO Harry De La Cruz, walking along Field Place towards Ryer Avenue from Grand Concourse. Sgt. Bryant was holding a gun by his side as he was walking. Sgt. Bryant walked up to a small black sedan parked along Field Place and placed the gun through the open driver's side window. There were two individuals in the vehicle. One of the individuals, who was sitting in the front passenger seat, was an acquaintance of § 87(2)(b)'s named § 87(2)(b). He did not know the driver of the vehicle, who was identified via the investigation as § 87(2)(b) though he had seen him around the neighborhood. Sgt. Bryant repeatedly shouted at § 87(2)(b) "Where's the bag? where's the black bag?" § 87(2)(b) denied knowing about the bag to which Sgt. Bryant was referring.

While Sgt. Bryant was shouting at § 87(2)(b) PO De La Cruz approached the passenger side of the car and removed § 87(2)(b) from the car. Sgt. Bryant told PO De La Cruz to cuff him, which he did. § 87(2)(b) heard § 87(2)(b) shout to § 87(2)(b) "Tell him where the bag is." Sgt. Bryant holstered his gun, walked to the back of the car, grabbed § 87(2)(b) by the throat with both hands, dragged him from the northern side of Field Place to the southern side by his throat, and slammed his back against a parked van. Sgt. Bryant then released § 87(2)(b)'s neck, slapped him once in the face, and said, "What the fuck? I told you I'm not playing. Where's the bag?"

Several more officers, three of whom were identified via the investigation as PO Elisha Duncan, PO Gabriel Baaith, and PO Edwin Jerez, arrived at the scene in a black unmarked van. § 87(2)(b) wrote the names of these officers on the back of an envelope that he was carrying. Several individuals, none of whom § 87(2)(b) knew, emerged from a parking lot, identified via the investigation as La Familia Parking (Encl. 2D), to observe the incident. The officers entered the black van with § 87(2)(b) and § 87(2)(b) while one of them drove the small black sedan, and left.

§ 87(2)(b) walked to the 46th Precinct Stationhouse, which was only a few blocks away from the incident location (Encl. 2A). When he arrived at the stationhouse he saw the small black sedan parked in the garage next to the stationhouse. Its doors were open and Sgt. Bryant was inside the vehicle searching it. § 87(2)(b) approached the car and shouted to Sgt. Bryant that he wanted his badge number so that he could file a complaint against him. Sgt. Bryant replied, "Get the fuck out of here."

§ 87(2)(b) left the garage and entered the stationhouse itself. § 87(2)(b) spoke to an officer at the desk, identified via the investigation as Sgt. John Gabriel, about Sgt. Bryant's refusal to provide his badge number. Sgt. Gabriel told him to wait for Sgt. Bryant to enter the Stationhouse so that he could get his badge number. § 87(2)(b) waited approximately 30 minutes but Sgt. Bryant did not enter the stationhouse. § 87(2)(b) exited the stationhouse and noticed that Sgt. Bryant was still in the garage searching the vehicle. § 87(2)(b) saw PO De La Cruz and requested Sgt. Bryant's badge number from him. PO De La Cruz stated that he could not give Sgt. Bryant's badge number and instead gave § 87(2)(b) his own name and badge number.

§ 87(2)(b) approached Sgt. Bryant and asked for his badge number again. Sgt. Bryant replied again, "Get the fuck out of here." PO De La Cruz told him that they were busy and he was bothering them. § 87(2)(b) walked across the street to the opposite sidewalk and began calling 311 on his cell phone to file a complaint. As § 87(2)(b) was on the phone, he heard Sgt. Bryant say, "Yo, Arrest that guy." PO De La Cruz and PO Baaith walked across the street to § 87(2)(b) and arrested him.

§ 87(2)(b) was taken into the stationhouse where his keys, his phone, and the envelope on which he had written the badge numbers of the officers were taken at the desk. PO De La Cruz took him to the cells

and told him, "Now you are going in here for being an asshole." § 87(2)(b) was also in the cells. Sgt. Bryant came to the cells and said to § 87(2)(b) "For being nosy and being an asshole, your two friends will be going home and you will be staying here." § 87(2)(b) asked Sgt. Bryant again for his name and shield number. Sgt. Bryant said "Bryant" and lifted up his shirt so that § 87(2)(b) could see his shield number. § 87(2)(b) began shouting at Sgt. Bryant and began to have a panic attack. He asked for an ambulance and was removed from the holding cell into a cell by himself. About 30 minutes later an ambulance arrived and § 87(2)(b) was taken to a hospital by PO De La Cruz for his panic attack. § 87(2)(b) asked PO De La Cruz why he was arresting him and he said, "My boss told me to take you in, to teach you a lesson."

PO De La Cruz issued § 87(2)(b) a voucher for his property. The voucher listed all of his property except the envelope that had the badge numbers written on it. He was never given back the envelope.

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)

IAB Complaint

On August 30, 2010, § 87(2)(b) contacted IAB via 911 and reported the following complaint (Encl. 3A-B).

§ 87(2)(b) stated that he was sitting inside his vehicle with § 87(2)(b) and § 87(2)(b) when officers knocked on his window. After rolling down his window, Sgt. Bryant pointed a gun at him and asked, "Where's the drugs, where's the black bag?" An unidentified officer grabbed § 87(2)(b) from the passenger side by his neck and slammed him against a van. § 87(2)(b) stated at some point § 87(2)(b) became angry and was "bad mouthing" the officers. Sgt. Bryant told the other officers, "Arrest that fucking guy," and § 87(2)(b) was arrested.

Attempts to Contact Civilians

On October 4, 2010, the CCRB attempted to contact § 87(2)(b) at the telephone number he provided to IAB. A male respondent confirmed that the right telephone number had been called, but denied that he was § 87(2)(b) that he knew § 87(2)(b) or that he had filed a complaint with IAB. § 87(2)(b) informed IAB that he was undomiciled during his initial complaint report and provided no address. A Lexis-Nexis search for § 87(2)(b) provided the same address as the one provided on his arrest report but listed no telephone number for him. Letters were sent to § 87(2)(b) at this address on October 4, 2010, and October 18, 2010. These letters were not returned by the US Postal Service but § 87(2)(b) did not respond to the attempts to contact him.

Between October 4, 2010, and November 8, 2010, five telephone calls were made to § 87(2)(b). On three occasions voicemail messages were left, on one occasion he picked up but stated that he was busy and could not provide a telephone statement or schedule an appointment at the time, and on one occasion an automated message stated that he was not available but did not redirect the call to a voicemail. Letters were sent to § 87(2)(b) on October 4, 2010, and November 3, 2010. These letters were not returned by the US Postal Service but § 87(2)(b) did not respond to the attempts to contact him.

The investigation identified, via NYPD documents (Encl. 7F-G), the prisoners who were in the cells with § 87(2)(b) as § 87(2)(b) and § 87(2)(b). Lexis-Nexis searches provided addresses for § 87(2)(b) and § 87(2)(b) in addition to a

telephone number for § 87(2)(b). Letters were sent to all three at their Lexis-Nexis provided addresses and the addresses listed on their arrest reports. The letters to § 87(2)(b) and § 87(2)(b) were not returned by the US Postal Service. The letters to § 87(2)(b) were returned as “undeliverable.” The CCRB attempted to contact § 87(2)(b) at his Lexis-Nexis provided telephone number on November 8, 2011. His mother picked up and stated that § 87(2)(b) no longer resided with her and could not provide any further contact information for him. § 87(2)(b) and § 87(2)(b) did not respond to these attempts to contact them.

Field work was conducted at the incident location on October 10, 2011. Investigators spoke with the manager, and subsequently workers, at La Familia Parking Corp., but none of them had any recollections regarding this incident.

NYPD Statement(s):

Subject Officer: PO HARRY DE LA CRUZ

- PO De La Cruz is a § 87(2)(b).
- PO De La Cruz worked from 7:00 a.m. to 3:35 a.m. on August 30, 2010, assigned to a SNEU team Observation Post at 184th Street and Ryer Avenue with Sgt. Francis Bryant. He was in uniform and assigned to unmarked van #1815.

Memo Book

PO De La Cruz’s memo book (Encl. 6A-C) notes that at 9:20 a.m. he stopped two individuals at the corner of Field Place and Ryer Avenue. At 9:25 a.m. § 87(2)(b) prevented him from making an arrest by placing his arm between PO De la Cruz and the person to be arrested. § 87(2)(b) repeatedly yelled at PO De La Cruz, requesting his badge number, as he placed his hands on PO De La Cruz and moved him away from the person he was attempting to arrest. § 87(2)(b) then went to the stationhouse and prevented PO De La Cruz from bringing prisoners into the stationhouse by shoving him, PO Jerez, and PO Baaith. § 87(2)(b) stated that he was going to sue PO De La Cruz in civil court. § 87(2)(b) also requested to go to the hospital so that he would have documentation ready when he sued.

CCRB Testimony

On January 5, 2011, PO Harry De La Cruz was interviewed at the CCRB (Encl. 6M-P). This statement was consistent with the arrest reports he filed for the arrests of § 87(2)(b) (Encl. 6F-G), § 87(2)(b) (Encl. 6H-I), and § 87(2)(b) (Encl. 6J-K), and the complaint report (Encl. 6D-E) and voucher (Encl. 6L) for the arrest of § 87(2)(b) and have been combined and summarized below, with any inconsistencies noted.

At approximately 9:20 a.m. on August 30, 2010, PO De la Cruz and Sgt. Francis Bryant, as a SNEU observation post, were on the roof of a building at the intersection of Field Place and Ryer Avenue in the Bronx, observing what was occurring along the street. The neighborhood and the buildings around the intersection are drug-prone locations. While they were observing the intersection, a Hispanic male, identified via the investigation as § 87(2)(e), § 87(2)(f)

§ 87(2)(b) walked into a building at the intersection. A few minutes later he exited the building and walked up to a car that was parked on Ryer Avenue, directly in front of the building. § 87(2)(b) looked in all directions for a few seconds and then reached his hand underneath the vehicle and pulled out a black plastic bag. He then walked to Field Place, between Ryer Avenue and Grand Concourse, where he handed the bag to another Hispanic male, identified via the investigation as § 87(2)(b) who was standing next to a black

Honda Civic. § 87(2)(b) then handed § 87(2)(b) what appeared to be money. Both individuals appeared nervous and were continuously looking around and behind them. After the bag was exchanged they both entered the car.

Sgt. Bryant indicated to PO De La Cruz that he believed there were narcotics in the bag based on the criminal history of the first individual and the suspicious nature of his removing the bag from underneath a car and then handing it to another individual. PO De La Cruz and Sgt. Bryant ran down the stairs from the roof to the ground. When they reached the ground, the black Honda Civic was still parked on Field Place. PO De La Cruz and Sgt. Bryant approached the vehicle. Sgt. Bryant asked the two individuals to step out of the vehicle. Both of them stepped out of the vehicle by themselves. PO De La Cruz stated that neither he nor Sgt. Bryant had his gun out at any point during this incident. Sgt. Bryant told them that they had seen the exchange and asked them where the black bag was. Both individuals denied knowing what bag the officers were referring to. Since he had already seen the bag, PO De La Cruz knew for a fact that the individuals were providing false answers, further making PO De La Cruz believe that there were drugs in the bag. PO De La Cruz decided to arrest them and charge them with possession of the suspected drugs.

At this time PO De La Cruz saw § 87(2)(b) approaching him from across Field Place, saying, “What are you guys doing? You not supposed to be doing that.” When § 87(2)(b) reached PO De La Cruz, he placed his arm between PO De La Cruz and § 87(2)(b) and continued to ask what he was doing. § 87(2)(b)'s arm did not touch either the prisoner or PO De La Cruz. PO De La Cruz told § 87(2)(b) to step back. § 87(2)(b) stepped back and asked PO De La Cruz for his name and shield number. PO De La Cruz told § 87(2)(b) his name and shield. He did not hear § 87(2)(b) request Sgt. Bryant's name or shield number. PO De La Cruz believed that he could have arrested § 87(2)(b) for obstructing governmental administration at this time but chose not to because he was busy arresting § 87(2)(b) and § 87(2)(b).

While PO De La Cruz was interacting with § 87(2)(b) Sgt. Bryant walked § 87(2)(b) across the street to a van that was parked a few cars behind the Honda Civic. PO De La Cruz believed that it was to prevent the two individuals from hearing what each other were saying and thereby influencing one another. § 87(2)(b) walked under his own strength and did not appear to be pulled or dragged by Sgt. Bryant. Sgt. Bryant had already handcuffed him and was holding his upper arm as they walked. § 87(2)(b) who was standing next to PO De La Cruz, began yelling repeatedly, “He's hitting him,” but when PO De La Cruz looked, he did not see Sgt. Bryant strike, push, or choke § 87(2)(b). PO Jerez and PO Baaith arrived in a prisoner van. § 87(2)(b) and § 87(2)(b) were placed inside and driven to the 46th Precinct stationhouse.

When the prisoner van arrived at the stationhouse § 87(2)(b) was already at the stationhouse. When PO De La Cruz, PO Baaith, and PO Jerez attempted to walk the prisoners into the stationhouse § 87(2)(b) stood in front of the stationhouse doors and prevented them from bringing the prisoners into the stationhouse. § 87(2)(b) extended his arms towards the officers as they approached, pushing them slightly backward, and said, “Let me get some shield numbers.” PO De La Cruz stated that he was unsure whether § 87(2)(b)'s purpose for stopping them was to prevent them from bringing the prisoners into the stationhouse or simply to get the shield numbers of the officers but because, either way, he was preventing them from bringing the prisoners into the stationhouse, he decided to arrest § 87(2)(b) and charge him with obstructing governmental administration (Encl. 6F). He proceeded to handcuff § 87(2)(b). PO De La Cruz stated that it was his decision to arrest § 87(2)(b) and he had not been told to do so by Sgt. Bryant. PO De La Cruz took § 87(2)(b) in front of his desk and removed his cell-phone, keys, and an envelope. § 87(2)(b) requested PO De La Cruz's name and shield number again. PO De La Cruz wrote his name and shield number on the envelope and handed it back to § 87(2)(b). He vouchered § 87(2)(b)'s keys, phone, and phone battery (Encl. 6L). He did not vouch the envelope because he

gave it back to § 87(2)(b) immediately. PO De La Cruz proceeded to place § 87(2)(b) into the cells.

After § 87(2)(b) was arrested, the black Honda Civic in which the two initial prisoners had been in was searched at the stationhouse by Sgt. Bryant and PO De La Cruz and the black bag was found underneath the driver's seat. Inside the bag were capsules typically used to hold and sell drugs but no actual drugs were found in the car or the bag so the two individuals were released and their arrests were voided.

After § 87(2)(b) was placed into the cells he began shaking the bars in the cell and shouting that he wanted to go to the hospital. Sgt. Bryant told PO De La Cruz and PO Baaith to take § 87(2)(b) to the hospital. PO De La Cruz denied having called § 87(2)(b) an "asshole" or having spoken to him discourteously at any point during this incident and he did not hear Sgt. Bryant curse at or speak discourteously to § 87(2)(b) or either of the two prisoners. PO De La Cruz denied having told § 87(2)(b) that Sgt. Bryant told him to arrest him to "teach him a lesson." On the way to the hospital and at the hospital, § 87(2)(b) told PO De La Cruz that he had previously sued the NYPD and won and had started a beauty salon with the money he had won and was going to sue again.

Subject Officer: SGT. FRANCIS BRYANT

- *Sgt. Francis Bryant is § 87(2)(b).*
- *On August 30, 2010, Sgt. Bryant worked from 6:55 a.m. to 3:52 p.m. and was assigned as the 46th Precinct SNEU Sergeant. He was working with PO Delacruz, PO Duncan, PO Baaith and PO Jerez, was dressed in plainclothes, and was not assigned to a motor vehicle.*

Memo Book

Sgt. Bryant's memo book (Encl. 6GG-HH) notes that at 9:20 a.m. two men were stopped. A third man, unrelated to the stop, pushed between officers and a perpetrator while the perpetrator was giving information to the officers. At 9:25 a.m. an individual was arrested.

CCRB Statement

On April 14, 2011, Sgt. Bryant was interviewed at the CCRB (Encl. 6II-KK). Sgt. Bryant's statement was largely consistent that of PO De La Cruz and only the differences will be restated.

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) Sgt. Bryant believed that a drug transaction had taken place and that the drugs were still in the vehicle. He radioed his field team, informing them of the possible drug transaction and proceeded to the street. Once Sgt. Bryant reached street-level, he observed PO Jerez and PO Baaith with the males standing outside of the vehicle. Sgt. Bryant approached them and began speaking to § 87(2)(b) and § 87(2)(b). While Sgt. Bryant was speaking to the men, a crowd began to form so he wanted to take the males back to the stationhouse, where the situation would be more controlled. Sgt. Bryant denied grabbing either § 87(2)(b) or § 87(2)(b) by the throat, slapping or dragging either of them, or pushing either of them against a van. He denied having cursed or spoken discourteously to § 87(2)(b) and § 87(2)(b). At no time during the incident did SGT Bryant hear anyone from the crowd ask for his name and badge number or for the names and badge numbers of the other officers present. Sgt. Bryant did not draw or point his gun at any point during this incident.

The vehicle was also brought back to the stationhouse and placed in the stationhouse garage where Sgt. Bryant searched it for the suspected drugs. From inside the garage Sgt. Bryant could not see what was

occurring in front of the stationhouse. While he was searching the car, PO Delacruz entered the garage and told Sgt. Bryant that he arrested § 87(2)(a) 160.50. Sgt. Bryant did not observe the interaction leading to § 87(2)(b)'s arrest and denied having instructed PO De La Cruz to arrest § 87(2)(b). Sgt. Bryant found the bag in a compartment inside the vehicle.

Sgt. § 87(2)(b) stated that the first time he noticed § 87(2)(b) was in the cells of the stationhouse. He did not recall having seen him at Ryer Avenue and Field Place or in front of the stationhouse. § 87(2)(b) requested Sgt. Bryant's name and shield number. He did not recall how he provided it to § 87(2)(b) but recalled that he did give it to him. He denied having spoken discourteously to § 87(2)(b) at any point.

Witness Officer: PO GABRIEL BAAITH

- PO Baaith is a § 87(2)(b).
- PO Baaith worked from 7:00 a.m. to 3:35 p.m. on August 30, 2010, assigned to Conditions in the 46th Precinct. He was in uniform and assigned to a black unmarked van.

Memo Book

PO Baaith has no memo book (Encl. 6Q-R) entries regarding this incident.

CCRB Testimony

On February 10, 2011, PO Gabriel Baaith was interviewed at the CCRB (Encl. 6S-T).

PO Baaith was standing in front of the 46th Precinct stationhouse when PO De La Cruz brought § 87(2)(b) and § 87(2)(b) to the stationhouse. PO Baaith did not recall having been present for the arrest of the two individuals at Field Place and Ryer Avenue. At approximately the same time that PO De La Cruz arrived, § 87(2)(b) also arrived at the stationhouse.

As PO Baaith and PO De La Cruz were escorting the prisoners into the stationhouse, § 87(2)(b) stood between the officers and the stationhouse doors and requested the names and shield numbers of the officers. PO Baaith said his shield number to § 87(2)(b) was told repeatedly to step out of the way but remained in front of the officers. PO Baaith did not recall having seen § 87(2)(b) make physical contact with the officers or the prisoners while standing in front of them. At this point an officer, PO Baaith could not recall which officer, arrested § 87(2)(b). PO Baaith did not recall whether that officer was instructed by another officer to arrest § 87(2)(b). He did not recall having heard an officer call § 87(2)(b) an "asshole" or having told him to "get the fuck out of here."

Witness Officer: PO EDWIN JEREZ

- PO Jerez is a § 87(2)(b).
- PO Jerez worked from 7:00 a.m. to 3:35 p.m. on August 30, 2010, assigned to the SNEU team in the 46th Precinct. He was in uniform and assigned to a black unmarked van.

Memo Book

PO Jerez notes in his memo book (Encl. 6U-V) that at 9:20 a.m. two individuals were arrested at the intersection of Ryer Avenue and Field Place.

CCRB Testimony

On February 10, 2011, PO Edwin Jerez was interviewed at the CCRB (Encl. 6W-Y).

At approximately 9:20 a.m. on August 30, 2010, PO Jerez received a call from Sgt. Francis Bryant to go to the intersection of Field Place and Ryer Avenue in regards to an arrest that had taken place at that location. When he arrived at the location, he saw § 87(2)(b) and § 87(2)(b) in handcuffs. PO Jerez did not see Sgt. Bryant drag, choke, or strike either of the prisoners. He did not see Sgt. Bryant draw his gun or speak obscenely to either of the prisoners. § 87(2)(b) was standing across the street from the officers and shouting at them. § 87(2)(b) approached PO Jerez and wrote down his badge number. PO Jerez saw him write down the badge numbers of the other officers present at the scene. PO Jerez did not recall any officer having refused to show their badge number to § 87(2)(b). Sgt. Bryant and PO De La Cruz placed the prisoners into the prisoner van and Sgt. Bryant assigned PO Jerez to drive a Honda Civic belonging to § 87(2)(b) and § 87(2)(b) to the 46th Precinct Stationhouse.

As PO De La Cruz walked the prisoners towards the stationhouse, § 87(2)(b) stood at the top of the stairs leading to the front door of the stationhouse, blocking the path to the door, and shouted at PO De La Cruz to release the prisoners. PO De La Cruz told § 87(2)(b) to step out of the way and go across the street. Initially § 87(2)(b) remained, but after approximately one or two minutes, and after PO De La Cruz instructed him several times to step out of the way, § 87(2)(b) walked across the street and PO De La Cruz walked the prisoners into the stationhouse. § 87(2)(b) followed them into the stationhouse and stood in the stationhouse asking any officer who was passed by for his or her name and shield number. After approximately five minutes an officer, PO Jerez could not recall who, told § 87(2)(b) to leave and he did.

After the prisoners were placed into the cells, the officers went back outside. PO Jerez recalled that an inventory search was conducted inside the Honda Civic but he did not recall which officers were involved in the search and he stated that he himself was not involved in the search, though he was standing near the car at this time. § 87(2)(b) approached the car while the officers were searching it and repeatedly asked the officers why they were searching the car and told them that they had no “business” inside the car. PO De La Cruz told § 87(2)(b) to put his hands behind his back. § 87(2)(b) put his hands behind his back and said, “Ok, I want this.” PO De La Cruz proceeded to handcuff and arrest § 87(2)(b). PO Jerez did not recall having heard another officer instruct PO De La Cruz to arrest § 87(2)(b). He did not recall whether or not Sgt. Bryant was involved in the car search and did not recall having heard Sgt. Bryant or any other officer having told § 87(2)(b) to “get the fuck out of here.” He did not hear an officer call § 87(2)(b) an “asshole” at any point.

Witness Officer: PO ORLANDO COLON

- PO Colon is a § 87(2)(b).
- PO Colon worked from 11:30 a.m. to 8:05 p.m. on August 30, 2010, assigned as the Field Intelligence Officer in the 46th Precinct. He was in plainclothes and assigned to an unmarked vehicle.

Memo Book

PO Colon has no memo book (Encl. 6Z-AA) entries regarding this incident.

CCRB Testimony

On March 22, 2011, PO Orlando Colon was interviewed at the CCRB (Encl. 6BB-CC).

PO Colon stated that he did not report to work at the 46th Precinct stationhouse until 11:30 a.m. on August 30, 2010. He recognized a photograph of § 87(2)(b) and stated that he had arrested § 87(2)(b) on an occasion approximately two years prior to the date of incident. He stated that he did not

see or interact with § 87(2)(b) on August 30, 2010.

Witness Officer: PO ELISHA DUNCAN

- PO Duncan is a § 87(2)(b).
- PO Duncan worked from 7:05 a.m. to 3:40 p.m. on August 30, 2010, assigned to the Conditions team in the 46th Precinct. He was in uniform and assigned to a black unmarked van 8515 with PO Jerez.

Memo Book

PO Duncan has no entries in his memo book (Encl. 6DD) regarding this incident.

CCRB Testimony

On April 6, 2011, PO Elisha Duncan was interviewed at the CCRB (Encl. 6EE-FF). PO Duncan's testimony was largely consistent with that of PO Jerez and therefore only the differences will be recounted.

PO Duncan stated that once he arrived back at the stationhouse, he remained inside. While he was inside the stationhouse, he saw § 87(2)(b) being brought into the stationhouse in handcuffs. PO Duncan did not know why § 87(2)(b) was arrested and he did not hear Sgt. Bryant instruct an officer to arrest § 87(2)(b). He did not recall having heard § 87(2)(b) ask him or any other officers for their badge number. He did not hear any officers call § 87(2)(b) an “asshole” or speak to him discourteously. PO Duncan recalled that a vehicle was brought to the stationhouse from Field Place and Ryer Avenue but PO Duncan did not see the car being searched and he was not involved in any such search.

§ 87(2)(a) 160.50

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim on August 31, 2010 (Encl. 5AB). A request was made to the Law Department on June 15, 2011, in regards to the status of his 50-H hearing. A response is being awaited as of June 30, 2011.

§ 87(2)(c), § 87(2)(b)

[illegible]

§ 87(2)(c), § 87(2)(b)

§ 87(2)(b)

Subject Officer(s) CCRB History

- PO Harry De La Cruz has been a member of the service for four years and there are no substantiated CCRB allegations against him (Encl. 1A-B).
- Sgt. Francis Bryant has been a member of the service for nine years and there is one substantiated CCRB allegations against him (Encl. 1C-D):
 - In regards to CCRB case number 200910870, a stop allegation was substantiated against Sgt. Bryant. He received instructions.

Allegations not Pleaded

- § 87(2)(b) alleged that PO De La Cruz did not vouch for the envelope on which he had written the names and shield numbers of the officers who were involved in this incident. This allegation was referred to the Office of the Chief of Department on November 8, 2010, via case number 201015298.
- § 87(2)(b) made several allegations of force and discourtesy against Sgt. Bryant in regards to § 87(2)(b). As previously discussed, § 87(2)(b) did not cooperate with this investigation and the CCRB was unable to obtain a statement from him. Due to the nature of the allegations, they could not be fully analyzed without a statement from § 87(2)(b) himself. These allegations were therefore not pleaded.

Conclusion

Identification of Subject Officer(s)

- § 87(2)(b) obtained the names of both PO De La Cruz and Sgt. Bryant during this incident and provided them during his CCRB testimony. Both PO De La Cruz and Sgt. Bryant acknowledged interacting with § 87(2)(b) during this incident. Allegations of force, discourtesy, vehicle search, and retaliatory arrest have been pleaded against Sgt. Bryant and allegations of discourtesy and seizure of property have been pleaded against PO De La Cruz.

Investigative Findings and Recommendations

Allegation A – Force – At Field Place between Grand Concourse and Ryer Avenue in the Bronx, Sgt. Francis Bryant pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Bryant had his gun drawn and pointed at § 87(2)(b) as he approached the vehicle but holstered it as soon as § 87(2)(b) and § 87(2)(b) exited the vehicle. Sgt. Bryant and PO De La Cruz denied that Sgt. Bryant had his gun drawn at any point in this incident.

NYPD v. Gilner, OATH Index No. 955/00 (Sept. 6, 2000) (Encl. 0H-AA) established a broad standard for the acceptable drawing and point of a firearm, stating that an officer is allowed to do so as long as he or she has a reasonable fear for his or her own or another person's safety. § 87(2)(g)

Allegation B – Abuse of Authority – At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

People v. Barreras, 677 N.Y.S.2d 526 (1998 - 1st Dept) (Encl. 0E-G) held that, without consent, the justification for the search of a car must be predicated on probable cause to arrest an occupant coupled with a reasonable belief that the vehicle contains related evidence or a weapon. The propriety of the search of the vehicle by Sgt. Bryant would be predicated on whether Sgt. Bryant and PO De La Cruz had probable cause to arrest § 87(2)(b) § 87(2)(b) and § 87(2)(b). In People v. Graham, 626 N.Y.S.2d 95 (1995 – 1st Dept.) (Encl. 0A-D), the court held that, the observation of the exchange of small unidentified objects for money in a drug-prone location by an experienced police officer was enough to constitute probable cause to arrest the individuals involved in the exchanges.

§ 87(2)(g)

Allegation C – Discourtesy – At the 46th Precinct Stationhouse in the Bronx, Sgt. Francis Bryant spoke obscenely and/or rudely to § 87(2)(b)

Allegation D – Discourtesy – At the 46th Precinct Stationhouse in the Bronx, PO Harry De La Cruz spoke obscenely and/or rudely to § 87(2)(b)

Sgt. Bryant and PO De La Cruz denied having cursed or spoken discourteously while speaking to any of the victims in this incident. § 87(2)(g)

Team: 5

Investigator: _____
Signature

Alexander Opoku-Agyemang
Print

July 1, 2011
Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date